

ALICE M. CONTE
PHYLLIS LANE ZEHR

IBLA 80-2

Decided April 4, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease M 31357-W.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Under 30 U.S.C. § 188(c) (1976), the Secretary of the Interior lacks authority to reinstate an oil and gas lease terminated by operation of law for failure to pay rental timely, unless rental payment is paid within 20 days of the due date.

2. Oil and Gas Leases: Assignments or Transfers -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Assuming arguendo, that the Department had authority otherwise to reinstate a terminated oil and gas lease under 30 U.S.C. § 188(c) (1976), where there has been late payment of rental, it could not do so where reasonable diligence was not shown nor a justifiable excuse given for the failure to exercise such diligence. Generally, a lessee will not be deemed to have exercised reasonable diligence where payment is transmitted after the due date. No justifiable excuse arises where an assignee of the lease relies on the assignor for payment, where a lessee relies on receipt of a courtesy billing notice from the Bureau of Land Management, or where a lessee was uninformed of the rental payment requirements.

APPEARANCES: Alice M. Conte and Phyllis Lane Zehr, pro sese.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

This appeal is taken from the August 14, 1979, decision of the Montana State Office, Bureau of Land Management (BLM), which denied appellants' petition for reinstatement of their oil and gas lease M 31357-W. Their lease terminated by operation of law for failure to pay the annual rental on or before May 1, 1979. BLM did not receive the \$20 due on the lease until August 3, 1979.

This lease was originally issued to Frances R. Powers and then assigned to Walter Azevedo, who in turn assigned the entire record title interest to the appellants on January 16, 1979. This assignment to appellants was approved by BLM effective February 1, 1979.

Appellants state that on July 20, 1979, a telephone inquiry regarding the status of the lease yielded only a statement by a BLM employee that the annual rental "appeared to have been paid"; however, the employee could find no receipt on file. On July 26, 1979, BLM notified appellants that their lease had terminated. On July 31 appellants wrote their check for the \$20 owed.

In their petition for reinstatement, and on appeal, appellants object to the lack of a notice of termination and claim that this omission justifies their failure to pay. They complain that they received no bill telling them when to pay nor did they receive copies of the applicable regulations. They claim that their July telephone inquiry displays reasonable diligence, once they discovered that the assignor had not paid the rental.

[1] Failure to pay the annual rental for an oil and gas lease on or before the anniversary date results in the automatic termination of the lease by operation of law. 30 U.S.C. § 188(b) (1976). The Secretary of the Interior is empowered to reinstate oil and gas leases which have terminated for failure to pay rental timely only where the rental is paid within 20 days and where such failure is either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1976). In this case, since BLM did not receive the rental payment until August 3, 1979, over 90 days past due, the lease cannot be reinstated. Oil Resources, Inc., 28 IBLA 394, 406, 84 I.D. 91, 97 (1977); Aaron V. Barson, 18 IBLA 156 (1974).

[2] Assuming arguendo this Department had authority otherwise to reinstate a terminated oil and gas lease under 30 U.S.C. § 188(c) (1976), it could not do so where reasonable diligence was not shown nor a justifiable excuse given for the failure to exercise such diligence. Generally, a lessee will not be deemed to have exercised

reasonable diligence where payment is transmitted after the due date. Thus, appellants could not be said to have exercised reasonable diligence here. Also, they have not shown that there was a justifiable excuse for the failure to exercise such reasonable diligence. No justifiable excuse is presented by appellants' arguments that they relied on BLM to tell them what to do or on the assignor to pay the rental. Reliance on receipt of a courtesy billing notice from BLM does not relieve the lessee's obligation to pay rental timely. Richard C. Corbyn, 32 IBLA 296 (1977); C. J. Iverson, 21 IBLA 312, 82 I.D. 386 (1975).

Lack of communication with an assignor does not justify late payment. Placid Oil Co., 38 IBLA 115 (1978). The assignee of an oil and gas lease is presumed to know the date and terms of the lease and its status at the time of assignment. If the assignee does not, he or she is put on inquiry notice. Ernst Soffer, 15 IBLA 161 (1974); Tenneco Oil Co., 7 IBLA 151 (1972). As to appellant's express wish that BLM had sent copies of the regulations, we note that the assignment form embodies some of the regulatory requirements. For example, the first numbered item on the assignment form gives the effective date of the lease, May 1, 1975, and the reverse side carries the following general instructions:

5. Effect of Assignment - Approval of assignment of a definitely described portion of the leased lands creates separate leases. Assignee, upon approval of assignment, becomes lessee of the Government as to the assigned interest and is responsible for complying with all lease terms and conditions, including timely payment of annual rental and maintenance of any required bond; except in the case of assignment of undivided interests, royalties, and operating agreements.

6. A copy of the executed lease, out of which this assignment is made, should be made available to assignee by assignor.

Nor do appellants' protestations that they were unaware of the regulatory requirements avail them anything. Those who deal with the Government are presumed to know the relevant statutes and regulations. 44 U.S.C. § 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 385 (1947); United States v. Messer Oil Corp., 391 F. Supp. 557, 562 (1975); Charles Caress, 41 IBLA 302 (1979). Ignorance of the applicable regulations does not constitute a justifiable excuse for a delayed rental payment. Apostolos Paliombeis, 30 IBLA 153 (1977).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

